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**FAX TRANSMISSION**

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**PLEASE DELIVER these 5 page(s), including this page:**

**TO : Lucy McGrath, Esq. FAX NO.: 011-33-1-49-53-57-80**  
**CC : Jan Paulsson, Esq. : 011-33-1-44-56-44-00**  
**Joseph A. Huse, Esq.**  
**FROM : T. Barry Kingham DATE : June 13, 2002**  
**FILE NO.: 080597-000001 RE : Case. No. 12 125/JNK**

**REMARKS:**

Please see the attached two letters.

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June 13, 2002

**VIA FACSIMILE**

Lucy McGrath, Esq.  
Assistant Counsel  
Secretariat  
ICC International Court of Arbitration  
International Chamber of Commerce  
38, Cours Albert 1er  
75008 Paris, France

Re: CGEA ONYX, et al. v. VALORES ECOLOGICOS  
S.A. de C.V. et ano., No. 12 125/JNK

Dear Ms. McGrath:

We are the attorneys for the respondents in this arbitration, Valores Ecologicos S.A. de C.V. and Hector Vargas Garza (collectively, "Valores"). I write in response to your letter dated June 6, 2002.

**Request for Extension:** pursuant to Article 5(2) of the ICC Rules we request an extension of time within which to file respondents' Answer. I understand that ICC records reflect that respondents received your letter of May 10, 2002 on May 14, 2002. Accordingly, the normal period within which to file an Answer would expire today, June 13, 2002. We request an extension of the time limit to thirty days after resolution of the consolidation issue referred to in your June 6 letter.

**Nomination of Arbitrator:** pursuant to Article 5(2) of the ICC Rules, we advise you that the agreement between claimants and Valores calls for the appointment of three arbitrators: one selected by Valores, one selected by the claimants and one selected by those two party-selected arbitrators. Valores hereby nominates as its arbitrator:

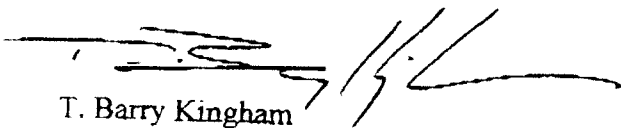
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Lucy McGrath, Esq.  
June 13, 2002

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Sincerely yours,

  
T. Barry Kingham

cc: Jan Paulsson, Esq.  
Joseph A. Huse, Esq.

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75008 Paris, France

Re: CGEA ONYX, et al. v. VALORES ECOLOGICOS  
S.A. de C.V. et ano., No. 12 125/JNK

Dear Ms. McGrath:

We are the attorneys for the respondents in this arbitration, Valores Ecologicos S.A. de C.V. and Hector Vargas Garza.

Claimants have nominated Robert Abrams, Esq. of New York as their arbitrator. We understand that claimants have also nominated Mr. Abrams as their arbitrator in Case No. 12 124/JNK, a separate and distinct arbitration against Waste Management, Inc. and Chemical Waste Management, Inc. to which Valores is not a party. In their Request for Arbitration in the instant case, No. 12 125/JNK, claimants have detailed the interrelation and similarities they believe exist between Case No. 12 124/JNK and 12/125JNK. Claimants state, at page 9, "[t]he disputes are interrelated."

Fundamental fairness requires that the same person should not act as an arbitrator in separate proceedings raising similar issues, a principle recognized by distinguished commentators. See, for example, Reymond, *Des Connaissances Personnelles de l'Arbitre a son Information Privilegee*, Revue de 'Arbitrage 1991, cited with approval in Craig/Park/Paulsson, *International Chamber of Commerce Arbitration*, 3<sup>rd</sup> Ed., 2000, p. 233, n. 64. Knowledge acquired by the arbitrator in one proceeding may impact upon the Arbitral Tribunal in the other proceeding: the arbitrator may feel compelled to withhold from his co-arbitrators information or

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Jennifer Kirby, Esq.  
June 13, 2002

opinions that are pertinent to the formation of his decision; or, conversely, the arbitrator may share his information with the other arbitrators and cause the Tribunal to base its decision on confidential or other information not submitted by, or to, the parties. This would risk infringing the party's right to be informed of and confront any evidence used against him. Id.

Furthermore, should an award be rendered in one proceeding before termination of the other proceeding, the arbitrator, the Tribunal -- and the second award -- would be exposed to criticism and challenge on the basis that the second award was biased because it must have been influenced by the proceedings and award in the first case.

Under these circumstances, we do not believe it is appropriate for Mr. Abrams to act as arbitrator in both cases and accordingly must challenge his appointment in Case No. 12 125/JNK pursuant to Article 11(1) of the ICC Rules.

Sincerely yours,

  
T. Barry Kingham

cc: Jan Paulsson, Esq.  
Joseph A. Huse, Esq.